

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AMANDA HUDSON, Minor.

COUNTY OF VAN BUREN,

Petitioner-Appellee,

v

JAMES A. MENTER,

Respondent-Appellant.

FOR PUBLICATION

June 24, 2004

9:20 a.m.

No. 246373

Van Buren Circuit Court

Family Division

LC No. 00-012934

Official Reported Version

Before: Hoekstra, P.J., and O'Connell and Donofrio, JJ.

O'CONNELL, J.

Respondent stepfather appeals of right the trial court's order requiring him to pay the cost of his stepdaughter's care and legal representation. The stepdaughter lived with her mother and respondent. In her teen years, the stepdaughter began exhibiting destructive behavior. On one occasion, she set fire to a toilet paper roll in one of her school's bathroom stalls. The incident led to the trial court taking jurisdiction over her. Afterward, authorities repeatedly found her in possession of alcohol, and she began getting into physical altercations with her mother. A petition alleging physical abuse by the mother resulted from these altercations.

Shortly after the second time police caught the stepdaughter in possession of alcohol, respondent violently erupted and physically abused her. On the basis of a petition containing this allegation, the trial court ordered respondent to leave the home and later followed up with an order that placed the child with relatives. At the conclusion of the case, the trial court found that respondent qualified as a "custodian" under MCL 712A.18(2), so it required him to reimburse petitioner for the cost of the child's care. We disagree with this conclusion and reverse. The issue is one of statutory interpretation, so we review it de novo. *In re MCI*, 460 Mich 396, 413; 596 NW2d 164 (1999).

When a trial court commits a juvenile to agency care outside the juvenile's home, MCL 712A.18(2) requires that the cost of care be reimbursed "by the juvenile, parent, guardian, or custodian" This statute and MCL 712A.6 confer jurisdiction on the court to obtain reimbursement from certain adults in the child's life regardless of their culpability for causing the court to remove the child. While the Legislature does not define "custodian" in the probate code, it narrowly defines the term for purposes of the Michigan Uniform Transfers To Minors Act,

MCL 554.521 *et seq.* Under that statutory scheme, one does not become a "custodian" without acquiring, under clearly articulated circumstances, legal possession of a minor's property, which is then held in trust for the child. MCL 554.523; MCL 554.533; MCL 554.537. Accepting the property means accepting all the attendant fiduciary obligations that normally attach to such a position of responsibility. MCL 554.537. "Custodian," therefore, has a specialized meaning in the law, and we will not ignore that meaning without a sound basis to believe the Legislature intended something different. The trial court did not consider the effect of this definition, but we find that it directly relates to the monetary issue presented, especially when the statute holds the juvenile, as well as the juvenile's parents and guardians, responsible for reimbursement. Because respondent was not even remotely a "custodian" in the financial sense, he was not responsible for reimbursing petitioner.¹

We note, however, that we would reach the same conclusion even if we found that "custodian" referred to custody of the child rather than custody of the child's property. As illustrated by the descriptions in MCL 554.537, incumbent in the term "custodian" is a special legal responsibility. If applied directly to the child, the designation inherently includes the legal duties to provide financial, emotional, and physical care and protection to the child. Cf. MCL 769.1(7). We find no basis in our jurisprudence to assign such a duty to stepparents across the board. We find the trial court's application of the presumed duty especially incongruous in this case, where, despite the death of the child's father, respondent refrained from adopting her, participated minimally in her upbringing, and did not marry the child's mother until the child was ten years old. Further, the "child" in this case was nearly sixteen years old when the petition for her removal from the home was filed. Under these circumstances, the trial court improperly designated respondent the child's "custodian." Respondent was not required, on that ground, to reimburse petitioner.

Reversed.

Donofrio, J., concurred.

/s/ Peter D. O'Connell
/s/ Pat M. Donofrio

¹ We acknowledge that in deciding *In re Huisman*, 230 Mich App 372, 379-381; 584 NW2d 349 (1998), we defined the term "custodian" differently, but that case no longer carries any precedential weight, as it was fundamentally overruled by *In re Trejo Minors*, 462 Mich 341, 352-354; 612 NW2d 407 (2000).